UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DANIEL JOPEK 19433 Cyclone Drive Cleveland, OH 44135 and ROCHELLE JOPEK 19433 Cyclone Drive Cleveland, OH 44135 Plaintiffs -vs- CITY OF CLEVELAND City Hall 601 Lakeside Avenue Cleveland, OH 44114 and ANTHONY JORDAN, Individually and as Prosecutor of City of Cleveland, 1200 Ontario Street Justice Center, 8th Floor Cleveland, OH 44113 and JOHN DOE #1, Individually and as Employee and/or Agent of City of Cleveland and/or Prosecutor's Office Address Unknown and	)	CASE NO.:1:06-CV-1000 JUDGE JOHN R. ADAMS AMENDED COMPLAINT (Jury Demand Endorsed Hereon)

)
JOHN DOE #2, Individually)
and as Employee and/or Agent of)
City of Cleveland and/or Prosecutor's Office)
Address Unknown)
)
and)
)
JOHN DOE #3, Individually)
and as Employee and/or Agent of)
City of Cleveland and/or Prosecutor's Office)
Address Unknown)
)
and)
)
JOHN DOE #4, Individually)
and as Employee and/or Agent of)
City of Cleveland and/or Prosecutor's Office)
Address Unknown)
)
Defendants)
)

Now come Plaintiffs, by and through counsel, and for their complaint against Defendants state as follows:

PARTIES

1. Plaintiff Daniel Jopek ("Jopek") is an individual and at all times relevant was a resident of Cleveland, Cuyahoga County, Ohio and has been employed by Cleveland Police Department in the City of Cleveland, Ohio.

2. Plaintiff Rochelle Jopek ("Rochelle") is an individual and wife of Jopek and at all times relevant was a resident of Cleveland, Cuyahoga County, Ohio.

3. Defendant City of Cleveland ("Cleveland"), is, and at all times relevant hereto, a municipal corporation, duly organized as a chartered subdivision of the State of Ohio, located in the County of Cuyahoga, with the capacity to sue and be sued. One subdivision of Cleveland is the City of Cleveland Prosecutor's Office ("Prosecutor's Office"). Cleveland employs, pays compensation for, controls, supervises and directs all personnel of Cleveland and Prosecutor's Office, including without limitation the individually named defendants.

4. Another subdivision of Cleveland is the City of Cleveland Police Department ("Police

Department"). Cleveland employs, pays compensation for, controls, supervises and directs all personnel of Police Department.

5. Defendant Anthony Jordan ("Prosecutor Jordan") is and was at all times relevant herein a resident of the State of Ohio, an employee of Cleveland and a prosecuting attorney with Prosecutor's Office.

6. Defendants John Doe #1, John Doe #2 John Doe #3 and John Doe #4(collectively "John Does") were at all times relevant herein residents of the State of Ohio and employees of Cleveland and/or Prosecutor's Office.

7. Cleveland, Prosecutor Jordan and John Does are hereby collectively designated "City".

8. Prosecutor Jordan and John Does individually, are collectively designated as "Individuals".

9. City and Individuals are collectively designated as "Defendants".

10. Whenever and wherever reference is made in this complaint to any act by City or Individuals, such allegations and reference shall also be deemed to mean the acts and failures to act of City and Individuals (Defendants) acting individually, jointly, or severally.

11. At all times relevant, Jopek had an express and/or implied employment contracts and/or collective bargaining agreements with City (Employment contract), setting out certain terms and conditions of employment and a guideline for initiating disciplinary actions against Cleveland police officers.

12. At all times relevant to this complaint, Defendants acted under color and pretense of law, to with: under color of the statutes, ordinances, regulations, customs and usages of the State of Ohio and City of Cleveland.

13. At all times relevant to this complaint, Defendants engaged in the illegal conduct herein mentioned to the injury of Plaintiffs, and deprived Plaintiffs of their rights, privileges and immunities secured to them by the laws of the State of Ohio.

BACKGROUND

14. On or about November 14, 2003 Jopek and his partner attempted to effectuate a traffic stop of Stanley Strnad ("Strnad") at which time Strnad drove off and the officers pursued.

15. Strnad crashed his automobile, fled on foot and the officers took chase on foot.

16. During this chase, Jopek believed Strnad was reaching for a gun from his waist, Jopek

fearing for his life, discharged his firearm striking and fatally wounding Strnad.

17. Police Department has an official cooling off period of 45 days following a shooting whereby Jopek was assigned to the Police Department gymnasium.

18. Following the shooting, Police Department conducts an investigation which is done by the "shoot team" and homicide department.

19. The "shoot team" and homicide department rule the Jopek shooting justified.

20. Internal Affairs ("IA") for Police Department conducts its own separate investigation into the November 14, 2003 shooting.

21. IA likewise concluded the Jopek shooting to be justified.

22. The findings of the investigation conducted by the "shoot team" and homicide department and IA are turned over to Prosecutor Jordan.

23. Prosecutor Jordan reviews these findings and decides to conduct his own investigation of the shooting.

24. Prosecutor Jordan went to the scene of the shooting, took measurements, interviewed witnesses and even questioned the Cuyahoga County Coroner's report concerning the bullet wounds Strnad sustained.

25. At the end of Prosecutor Jordan's investigation he concludes that the shooting was not justified and that Jopek should be criminally charged.

26. Prosecutor Jordan has no training or is otherwise qualified to investigate the shooting and coroner's findings.

27. Prosecutor Jordan performed functions normally performed by a detective, police officer, or other trained law enforcement officer and a coroner.

28. Prosecutor Jordan's investigation was separate from his judicial proceeding duties.

29. Prosecutor Jordan's independent investigation was outside the course and scope of his duties.

30. On or about July 8, 2004 Jopek surrendered himself to Police Department and was charged with reckless homicide and negligent homicide.

31. Jopek was placed in a holding cell, booked and processed for over six hours.

32. Jopek started treatment with a physician for severe depression and anxiety.

33. On August 25, 2004, before a duly impaneled grand jury the Defendants appeared

before the court and falsely, maliciously, and without reasonable or probable cause charged Jopek with the commission of the crime of reckless homicide and negligent homicide.

34. At the conclusion of the grand jury, the grand jury returned a no bill to all the charge of reckless homicide and negligent homicide.

35. City and Prosecutor Jordan, after the no bill to the charges Defendants attempted to bring further charges against Jopek.

36. Defendants filed amended charges against Jopek under general police orders in October, 2004. These charges are heard before the City of Cleveland Safety Director rather than in a court of law.

37. After placing Jopek back in active duty the Defendants, in an attempt to further retaliate against him, placed Jopek in the Crime Scene Unit which is where Jopek was booked and processed and held when he was arrested on July 8, 2004.

38. At all times relevant, unless otherwise specifically stated, Defendants were aware of the actions and/or decisions of all Defendants, were employees and/or agents of City acting within the scope of their employment and/or service and ratified the same on behalf of City.

39. Defendants acts were committed pursuant to the policies and customs of City and/or Prosecutor's Office, and/or Individuals, which include failure to adequately and reasonably hire, train, supervise and discipline Cleveland employees, failure to adequately staff Cleveland offices and/or divisions with competent, honest, reliable employees of Cleveland and Prosecutor's Office.

40. The injuries Jopek and Rochelle incurred herein were directly and proximately caused by the negligent hiring, supervision, training, and disciplinary policies and practices of Defendants.

41. The conduct of the Defendants set forth above combining and concurring was negligent, willful, wanton, reckless and exhibited a conscious disregard for the rights of Plaintiffs.

FIRST CAUSE OF ACTION
FALSE ARREST

42. Plaintiffs realleges each and every allegation contained in the preceding paragraphs of this Complaint and further state and allege as follows:

43. Defendants relied wholly or partially, upon unfounded false statements, allegations and on an improperly conducted investigation when Defendants falsely, maliciously, and without reasonable or probable cause swore to a criminal complaint and then falsely testified before a grand jury against Jopek.

44. Defendants acted maliciously and without reasonable or probable cause in falsely and erroneously causing the arrest of Jopek, with the intent to injure Jopek and his good name and reputation.

45. Jopek was taken into custody and falsely imprisoned against his will.

46. Defendants acted in concert and/or without authorization of law, willful, knowingly, and purposely, with the specific intent of depriving Jopek of his personal liberty and freedom.

47. As a direct and proximate result of the unlawful arrest and detention of Jopek by Defendants, and the deprivation by Defendants of the personal liberty and freedom of Jopek, Jopek suffered extreme humiliation and embarrassment and damage to Jopek's reputations in his community.

48. As a further result Jopek suffered and continue to suffer severe mental anxiety and distress and physical discomfort which required treatment by physicians.

49. The conduct of the Defendants set forth above combining and concurring was negligent, willful, wanton, reckless and exhibited a conscious disregard for the rights of Plaintiffs.

WHEREFORE, Jopek demands judgment against Defendants on his First Cause of Action in excess of $25,000.00, punitive damages in excess of $50,000.00, costs, reasonable attorney fees and any other relief the Court deems just and appropriate.

SECOND CAUSE OF ACTION
MALICIOUS PROSECUTION

50. Plaintiffs realleges each and every allegation contained in the preceding paragraphs of this Complaint and further state and allege as follows:

51. Defendants acted in a reckless and discriminatory fashion when Defendants failed to properly investigate the shooting of Strnad and the facts surrounding the same before charging Jopek and presenting the same to the grand jury.

52. Defendants acted maliciously and without reasonable or probable cause and in a selective fashion in instigating the prosecution of Jopek, and with the intent to injure Jopek in his good name and reputation.

53. Upon completion of the grand jury the grand jury returned a no bill to all the charges alleged against Jopek.

54. Defendants acted in concert and/or without authorization of law, willful, knowingly, and purposely, with the specific intent of depriving Jopek of his rights.

55. As a direct and proximate result of Defendants' acts, which resulted in the malicious prosecution of Jopek, Jopek suffered extreme humiliation and embarrassment and damage to Jopek's reputations in his community.

56. As a further result Jopek suffered and continue to suffer severe mental anxiety and distress and physical discomfort.

57. The conduct of the Defendants set forth above combining and concurring was negligent, willful, wanton, reckless and exhibited a conscious disregard for the rights of Plaintiffs.

WHEREFORE, Jopek demands judgment against Defendants on his Second Cause of Action in excess of $25,000.00, punitive damages in excess of $50,000.00, costs, reasonable attorney fees and any other relief the Court deems just and appropriate.

THIRD CAUSE OF ACTION
ABUSE OF PROCESS

58. Plaintiffs realleges each and every allegation contained in the preceding paragraphs of this Complaint and further state and allege as follows:

59. The criminal proceedings against Jopek were instituted for the purpose of retaliation.

60. The Defendants knew or should have known that the proceedings would not result in convictions.

61. After the failure of the criminal proceedings, the Defendants instituted proceedings before the Director of the Department of Public Safety, so as to justify their actions even though the evidence did not support such a claim.

62. As a direct and proximate result of Defendants' acts, Jopek suffered extreme humiliation and embarrassment and damage to his reputation in his community.

63. As a further result, Jopek suffered and continues to suffer mental anxiety and distress and physical discomfort which required treatment by physicians.

64. The conduct of the Defendants set forth above combining and concurring was negligent, willful, wanton, reckless and exhibited a conscious disregard for the rights of Plaintiffs.

WHEREFORE, Jopek demands judgment against Defendants on his Third Cause of Action in excess of $25,000.00, punitive damages in excess of $50,000.00, costs, reasonable attorney fees and any other relief the Court deems just and appropriate.

FOURTH CAUSE OF ACTION
INFLICTION OF EMOTIONAL DISTRESS

65. Plaintiffs realleges each and every allegation contained in the preceding paragraphs of this Complaint and further state and allege as follows:

66. All or part of the acts of Defendants were done willfully, maliciously, outrageously, deliberately, and with the purpose to inflict emotional distress upon Jopek and Rochelle and/or were done in reckless disregard of the probability of causing Jopek and Rochelle emotional distress, and these acts did in fact result in severe and extreme emotional distress.

67. As a direct and proximate result of the Defendants' acts, Jopek and Rochelle were caused to incur severe and grievous mental and emotional suffering, fright, anguish, shock, nervousness, anxiety. Jopek and Rochelle continue to suffer mental and emotional suffering.

68. As a direct and proximate result of the Defendants' acts, Jopek and Rochelle were caused to obtain medical and psychiatric treatment.

69. The conduct of the Defendants set forth above combining and concurring was negligent, willful, wanton, reckless and exhibited a conscious disregard for the rights of Plaintiffs.

WHEREFORE, Jopek and Rochelle each demand judgment against Defendants on their Fourth Cause of Action in excess of $25,000.00, punitive damages in excess of $50,000.00, costs, reasonable attorney fees and any other relief the Court deems just and appropriate.

FIFTH CAUSE OF ACTION
LOSS OF CONSORTIUM

70. Plaintiffs realleges each and every allegation contained in the preceding paragraphs of this Complaint and further state and allege as follows:

71. Prior to Defendants' acts. Rochelle was in good health and fully capable of performing, and did perform, all the usual duties of a homemaker and wage earner in the care and management of Jopek and Rochelle's home.

72. As a direct and proximate result of the actions of Defendants, Rochelle suffered extreme humiliation and embarrassment and damage to Rochelle's reputation in the community.

73. As a further result of Defendants actions Rochelle suffered severe mental anxiety and distress and physical discomfort and lost the love, happiness, comfort, and service of her husband Jopek and will continue to do so in the future.

WHEREFORE, Rochelle demands judgment against Defendants on the Fifth Cause of Action in excess of $25,000.00, punitive damages in excess of $50,000.00, costs, reasonable attorney fees and any other relief the Court deems just and appropriate.

SIXTH CAUSE OF ACTION
LOSS OF CONSORTIUM

74. Plaintiffs realleges each and every allegation contained in the preceding paragraphs of this Complaint and further state and allege as follows:

75. As a direct and proximate result of the actions of Defendants Jopek has lost the love, happiness, comfort, and service of his wife Rochelle.

WHEREFORE, Jopek demands judgment against Defendants on the Sixth Cause of Action in excess of $25,000.00, punitive damages in excess of $50,000.00, costs, reasonable attorney fees and any other relief the Court deems just and appropriate.

Respectfully submitted,

/s/ David A. Hamamey II
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JURY DEMAND

Plaintiffs hereby demand a trial by jury comprised of the maximum number of jurors allowed by law.

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